

05-556 SEP - 2 2005

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No. _____

IN THE

Supreme Court of the United States

Billie M. Massey

Petitioner

v.

Judge David T. Stosberg
United States Bankruptcy Court

Respondent(s)

Judge Ronnie C. Dortch
Thirty-Eighth Judicial Circuit

On Petition For Writ Of Certiorari
To The United States Court of Appeals
for the Sixth Circuit

PETITION FOR WRIT OF CERTIORARI

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Questions Presented For Review

1. The decisions by the courts that violate the petitioners pro se constitutional rights of due process under the Fourteenth Amendment.
2. The discretionary rulings by Judges on Civil Procedure Rule 12(b)(6) when one complies with Civil Procedure Rule 8.
3. Judicial immunity.
4. Bankruptcy Judges acting as an administrator of a bankruptcy estate.
5. Recusal of Judges when they are apprised of a conflict and impropriety in a case.

List of Parties

- ☒ [X] All parties appear in the caption of the case on the cover page.
- ☐ [] All parties do not appear in the caption of the case on the cover page. A list of all parties to the proceedings in the Court whose judgment is the subject of this petition is as follows:

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**IN THE
SUPREME COURT OF THE UNITED STATES**

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a Writ of Certiorari will be issued to review the judgments below.

OPINIONS AND ORDERS

The Opinion of the United States Court of Appeals, Case No. 040-5344, filed February 8, 2005, appears at Appendix A to the petition

The Opinion of the United States District Court, Civil Action No. 03-CV-147, entered February 25, 2004, appears at Appendix B to the petition.

The Opinion of the United States Court of Appeals, Case No. 04-5344, filed June 6, 2005, appears at Appendix C to the petition.

The Order of the United States District Court, Civil Action No. 1:03CV-147-M, entered August 22, 2003, appears at Appendix D to the petition.

The Order of the United States District Court, Civil Action No. 1:03CV-147-M, entered September 9, 2003, appears at Appendix E to the petition.

The Designation of the United States District Court, Case No. 1:03CF-147-M, entered October 31, 2003, appears at Appendix F to the petition.

Jurisdiction

The date on which the United States Court of Appeals decided my case was February 8, 2005.

A timely petition for rehearing, Case No. 04-5344, was denied by the United States Court of Appeals on June 6, 2005, and a copy of the order denying the rehearing appears at Appendix C.

Constitutional and Statutory Provisions Involved

Appendix A All Pages

Appendix B All Pages

Appendix C All Pages

Appendix D All Pages

Appendix E All Pages

Appendix F All Pages

Statement of the Case

On August 13, 2003, Billie M. and Georgie C. Massey, husband and wife, filed a Complaint in the United States District Court, Western District of Bowling Green, Case No. 1:03CV-147-M. The Masseys filed this said Complaint pursuant to relevant facts of statutory laws and rules, bankruptcy codes, State and Federal laws. The Masseys cited violations by Federal Judge Stosberg and State Judge Dortch. This case was filed under 42 U.S.C. § 1983, pursuant to *Barbara Hafer v. James C. Melo Jr., et al.*, 502 U.S. 21. This case is relevant to a bankruptcy case (Chapter 12) filed on June 23, 1999. In consideration of Question No. 1 of due process, the court (Judge Stosberg) terminated the Automatic Stay on a motion by the creditors' counsel, Gary S. Logsdon, citing there was no equity in the Masseys' property. Judge Stosberg terminated the automatic stay without Gary S. Logsdon presenting proof to support his motion. This is a violation of Title 11, Sec. 362(g)(1), and 362(a). Since no evidence was filed by Logsdon to support his motion, the court is required under Bankruptcy Rule 4001 to become involved under said rule, *Sonnax Industries, Inc. v. Tri Component Products Corp.*, 907 F 2d 1280, 1285 23 C.B.C. 2d 132, 138 (2d Cir. 1990).

Judge Stosberg was in violation of the Masseys' rights under Title 11, Sec. 105 for creating rights for Logsdon's client, Judge Stosberg's Order dated October 25, 1999, circumvented the legal guidelines of law, *Plaza de Diego Shopping Center, Inc.*, 911 F2d 820, 830-32 (1st Cir. 1990).

The Bankruptcy Court is one of equity and has a duty to protect equities a debtor has in his property, *Professional Sales Corp.* 48 Bankr. 651, 658 (Bankr. N.D. Ill., 1985).

The Massey's Chapter 12 Plan was never discussed or reviewed in court. This plan should have been confirmed case law, *Mann Farms, Inc.*, CA9 (Mont.) 1990, 917 F 2d 1210, *Marshall*

Bkrtcy C.D. Ill. 1989, 108 B.R. 195, *Danelson Bkrtcy*. D. Mon. 1987, 77 B.R. 261. Judge Stosberg should have invoked his power under Title 11, Sec. 105 to prevent the creditors impeding the reorganization process, 488 U.S.C. 868 (1988), *A.H. Robins Co.* 828 F2d 1023, 1024, 1026 (A4 1987). Sec. 105(a) gives bankruptcy courts a broad mandate to reorganize debtors and to distribute funds equitably to creditors, *Celotex Corp. v. Edwards*, 514 U.S. 300.

Judge Stosberg was in violation when he allowed the three creditors to sell the Masseys' property, and distribute the proceeds, Judge Stosberg committed fraud, *U.S. v. West C.A. 5 (Tex.)* 1994, 22 F3d 586, 513 U.S. 1020.

Judge Stosberg should have enjoined the state courts to send the funds from the sale of the Masseys' property to the bankruptcy court for distribution. *McLoughlin v. Knop*, U.S. District E.D. Louisiana, No. 14662, 214 Fed. Reporter 260.

Judge Stosberg violated the Masseys' rights and bankruptcy code. Bankruptcy funds cannot be transferred without the court's approval. The Masseys' funds were distributed by the State Court Master Commissioner. This is a violation of Title 11, Sec. 541(d) and Sec. 363(b). *Darwin a.k.a. R.R. Darwin v. H. Beck, Successor or Trustee to A.W. Beck* No. 87-5007, U.S. Court of Appeals, Eleventh Circuit, 839 F. Reporter 2d Series 1516.

The Bankruptcy Court has the power to ensure the orderly administration of the debtors' estate. Quote: Congress did not intend that "bankruptcy judges sit idly by and blithely ignore abuse that could lead to the compromise of the bankruptcy system and the integrity of the court," *Nikron* 27 Bankr. at 777.

The violations by Judge Stosberg are an override of explicit mandated bankruptcy code, *Norwest Bank Worthington*

v. Ahlers, 485 U.S. 197, 206 and *Rashid* 97 B.R. 610, 615 (W.K. Okla. 1989). The Judge has the power under Title 11 § 105 to protect the debtors' property, *Walker 3 Bankr.* 213, however, Judge Stosberg chose to violate the Masseys' rights.

Judge Stosberg is also charged with the State violations listed below:

KRS 378.030

KRS 514.070, SCR 3.130-8.3(a)(b)

KRS 501.020

Judge Dortch, State Judge, was charged in the Complaint Case No. 1:03CV-147-M with violations of Federal and State laws as he did work in concert with Judge Stosberg and the other officials and attorneys in this case.

Since the violations of the Masseys' rights by Judge Dortch vary to some degree, the petitioner's will file a summation of the Federal and State law violations by Judge Dortch as listed in the Complaint.

Violations by Judge Dortch:

Federal:

Title 11, Section 362

Title 11, Section 541

Title 11, Section 363(b)

42 U.S.C. 1983

28 U.S.C. 1334

18 U.S.C. 1001

State:

KRS 31A.990

KRS 378.010

KRS 378.030

KRS 506.040
KRS 514.070, SCR 3.130-8.3(a)(b)
KRS 427.060
KRS 522.030
KRS 31A.040
KRS 26A.015
KRS 31A.040
KRS 505.060
KRS 31A.010
KRS 501.020

On August 20, 2003, the U.S. District Court Judge recused himself, Appendix D.

On September 5, 2003, the Chief Judge of the U.S. District Court issued an Order of Recusal for all judges in the Western District of Kentucky, and referred the matter to the Chief Judge of the Sixth Circuit Court of Appeals, Appendix E.

On October 31, 2003, Chief Judge Danny J. Boggs, United States Court of Appeals for the Sixth Circuit, issued a judgment designating and assigning U.S. District Court judge Bernard Friedman from the Eastern District of Michigan to prepare for the trial of this said case, Appendix F.

The Masseys filed their Complaint *pro se* under 42 U.S.C. § 1983, in consideration of Question No. 1, the Masseys cited case law supporting their rights of due process as a *pro se*. The Masseys, as the complaining parties, are entitled to be heard more fully than is possible on a motion to dismiss a complaint, *Scheuer v. Rhodes*, 416 U.S. 232; *Conley v. Gibson* 355 U.S. 41, 45-46 (1957); also *Haines v. Kerner* 404 U.S. 519 (1972). The Opinion and Order of Appendix B on pages 6 and 7, Judge Friedman's ruling was very vague, he stated he was assuming the truth of the Plaintiff's allegations (in other words, taking it upon himself to decide), depriving the Massey's of due process as quoted above in case law.

On pages 6 and 7, same paragraph, Judge Friedman used absolute judicial immunity as a means to deprive the Masseys of a claim—another violation of due process under case law stated above.

The District Court Opinion (Appendix B) is contrary to rulings in the lower courts and the U.S. Supreme Court. The Masseys cited these violations in their Complaint, Responses and Appeals.

Considering Question No. 2, the lower courts are in direct conflict with other courts and the U.S. Supreme Court in their rulings on Civil Procedure Rule 12(b)(6) (according to Rule 8) as stated above in Question No. 1. The United States Supreme Court citings most quoted by the courts protects the rights of a pro se to present his claim in court, *Haines v. Kerner*, 404 U.S. 519 (1972); *Scheuer v. Rhodes*, 416 U.S. 232 and *Conley v. Gibson*, 355 U.S. 41, 45-46 (1957). These laws are settle law and should be interpreted very broadly, 12(b)(6) is the most abused rule in our system. The Masseys cited the compelling facts in their case.

Considering Question No. 3, the District Court and the Appeals Court are in direct conflict with other courts and the U.S. Supreme Court on judicial immunity. Under 42 U.S.C. § 1983, no one is immune from liability—a judge is no exception—if a judge's actions are contrary to mandatory regulations and policy, *United States v. Gaubert*, 499 U.S. 315. On the issue of immunity, Appendix B, page 4, states that both defendants, Judge Stosberg and Judge Dortch, are absolutely immune from claims in this case. Nothing could be further from the facts. Also, on the front page of Appendix B, it states that Judge Stosberg is not a proper defendant, as he is a Federal official; the Supreme Court has held that the language of 42 U.S.C. § 1983 applies to Federal statutes, *Maine v. Thiboutot*, 448 U.S. 1. Therefore, Federal officials are subject to the same claims as state officials. Judge Stosberg does not enjoy absolute

immunity, since *ExParte Young* 209 U.S. 123 (1908), nor under 416 U.S. 232 in *Monroe v. Pape* § 1983 was meant to give a remedy to a deprived party by an official's abuse, 365 U.S. at 172, noted in *Pierson v. Ray*, 386 U.S. 547 (1967). That the "legislative record (of 1983) gives no clear indication that Congress meant to abolish wholesale all common-law immunity" *Id.* at 554. Also, the court concludes that, had Congress intended to abolish the common-law "immunity of judges for acts within the judicial role" *Id.* at 554, it would have done so specifically.

Judge Stosberg and Judge Dortch violated "clearly established" statutory and constitutional rights of which a reasonable person would have known, *Harlow, et al., v. Fitzgerald* 457 U.S. 800.

The fact is, Judge Stosberg and Judge Dortch do not enjoy absolute immunity, the common-law principles of judicial immunity does bar relief and there never has been a rule of absolute judicial immunity, *Pullium v. Allen* 466 U.S. 522 (1984), *Forrester v. White*, 484 U.S. 219, *Antione Buyers & Anderson, Inc., et al.*, 508 U.S. 429 (1993), quoting 500 U.S. at 500 relating to judges.

Considering Question No. 4, the two judges in this case have been cited with many violations of bankruptcy laws and other state and federal laws, including the intentional misappropriation of federal money, as the judge did not order the money in a bankruptcy case to be sent to the court for distribution by the trustee. The fact that Judge Stosberg does act in an administrative capacity as a bankruptcy judge, pursuant to 28 U.S.C. § 157, *Frates v. Weinshienk*, 882 F2d 1502 (10th Cir., 1989) at 1504. Judge Stosberg acted in an administrative capacity by "allotting" the Masseys' estate funds to Judge Dortch's court. Judge Stosberg and Judge Dortch served an administrative function and also an executive function; both judges do not enjoy immunity, *Forrester v. White*, 484 U.S. 219.

Considering Question No. 5, on August 20, 2003, the process of designating a judge to act in the Massey's case, Case No. 1:03CV-147-M, began (Appendix D). The process included (Appendix E) and on October 31, 2003, the designation was completed (Appendix F) by Judge Boggs.

On February 8, 2005, an Order by the three judge panel of the Sixth Circuit (Appendix A) clearly lists Chief Judge Boggs as a judge on the panel. Also, Appendix C clearly lists Judge Boggs as a judge on the *en banc* appeal.

Judge Boggs assigned Judge Friedman to try the Massey's case, Case No. 1:03CV-147-M (Appendix F).

On June 30, 2003, Judge Boggs appointed Judge Stosberg to a term on the bankruptcy court, 44 days after the Masseys had filed their Case No. 1:03CV-147-M. It is a well established fact that Judge Boggs was apprised of the personal knowledge, and that by serving on the court panel, was contrary to the rights of the Masseys under 28 U.S.C. § 455(a)(b)(1). Judge Boggs violated the Masseys' rights under 42 U.S.C. § 1983 and due process. This paragraph is relevant to Question No. 1.

Reasons for Granting the Petition

The petitioners are requesting a review of this petition by the court as there are Opinions, Orders, Judgments, citings and rulings that have departed from the accepted and usual course of judicial proceedings, such as case law opinions from the United States Supreme Court concerning a *pro se* litigant's constitutional rights, the lower courts have failed to concur with the United States Supreme Court's decisions concerning a person who has to represent themselves in court because they cannot afford an attorney and do not qualify for a public defender in civil matters. This is a serious matter for the

peasants of our society who are persons according to our Constitution and should be protected from the oppression of the government. The Masseys are parties to this type of society. The Masseys are calling for an exercise of the United States Supreme Court's supervisory powers to protect the Masseys' and the public's constitutional rights.

When a judge rules discretionary, they are asserting their individual choice or judgment and they have the power of free decision or latitude of choice, this is a discriminating act by the judge. This said action by the judges eliminates the theory of evidence and violates a person's constitutional rights to be heard fully in an open court of law. This is an important constitutional matter. I am asking this Court to exercise its powers and clarify the discretionary discrimination by these judges and the courts.

The decisions by the courts are not only erroneous, but are unethical in the context of jurisprudence. The rulings in this case are in conflict with the Appellate Court's rulings and also the United States Supreme Court decisions. This petition clearly contains the citings of conflicting decisions in the U.S. District and the Bankruptcy Court. Bankruptcy laws have a profound effect upon the social fabric in this country, as I have seen some of my hard-working friends lose everything they have worked for in life, due to the besiege of creditors, thankfully bankruptcy laws were in place or it would have been worse. The citizens who have to file bankruptcy most likely encounter a reciprocating situation: the creditors, court and greedy lawyers. Therefore, bankruptcy does affect not only the Masseys, but also the public. In Appendix F, Judge Boggs states in my Judgment, the public interest so requires him to assign a judge to my case, and then on Appeal, ruled against the Masseys (Appendix A) in violation of 28 U.S.C. § 455 (a)(b)(1). This is the type of injustice the Masseys have had to tolerate from the Bankruptcy Court to the District Court to the Appeals Court. The Bankruptcy Court Judge Stosberg has

legislated from the bench on all of his decisions against the Masseys, as facts in this petition will substantiate. Another reason this Court should grant this petition, is the political influence that is so prevalent in this case. In Appendix A, Judge Boggs addresses the political influence, however, he did not address it specifically in the Masseys' Appeals brief to the Sixth Circuit. Massey spelled out the political gurus; U.S. Senator Mitch McConnell is a very, very dear friend of Gary S. Logsdon, the perpetrator of the Masseys' problems. Also, Mr. McConnell is a friend of Judge Stosberg, Judge Dortch and Judge Boggs; Judge Boggs once tenured at the U.S. District Court in Bowling Green and is a very good friend of Gary S. Logsdon. One has to look no further than Appendix A and Appendix C to get the message. U.S. Supreme Court Justice John Paul Stevens, in a speech to the American Bar Association in Chicago on August 6, 2005, underscored the matters' prominence at the Court, noting evidence of "serious flaws." Justice Stevens stated that DNA evidence has shown "that a substantial number of death sentences have been imposed erroneously."

"It indicates that there must be serious flaws in our administration of criminal justice," he said.

The Masseys define Justice Stevens' remarks to encompass civil crimes, as well as criminal, and criminal and civil crimes are similar in nature, and are processed in front of the same body of justice.

Justice Stevens said the jury selection process and the fact that many trial judges are elected, work against accused murderers. The Masseys define Justice Stevens' remarks as referring to the civil process also, the jury process and trial judges, whether elected or appointed, are subject to political influence.

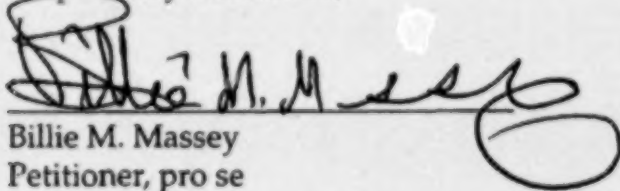
The Masseys respectfully ask this court to consider this petition favorably.

The petitioner respectfully prays that a Writ of Certiorari be granted upon the citings in this petition, whereby the petitioner can seek justice in the District Court.

Conclusion

The petitioner has filed this petition with pertinent facts relating to the issues in this case and hereby requests that a Writ of Certiorari should be granted.

Respectfully Submitted,


Billie M. Massey
Petitioner, pro se

Date 10-21-05

No. 04-5344

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

BILLIE M. MASSEY;
GEORGIE C. MASSEY,

Plaintiffs-Appellants,

v.

DAVID T. STOSBERG, Judge, United
States Bankruptcy Court; RONNIE C.
DORTCH, Thirty-eighth Judicial Circuit

Defendants-Appellees

FILED
FEB 8 2005
LEONARD GREEN.

ORDER

NOT RECOMMENDED FOR PUBLICATION
Sixth Circuit Rule 203(j) limits citation to appeals.
Please see rule 203(j) before citing in a paper
in the Sixth Circuit. If cited, a copy must be
permanently displayed
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Before: BOGGS, Chief Judge; KENNEDY and
MARTIN, Circuit Judges.

Billie M. Massey and Georgie C. Massey ("the Masseys") appeal pro se from a district court judgment that dismissed their civil right's action, filed under 42 U.S.C. § 1983. Their appeal has been referred to a panel of this court pursuant to Rule 34(j)(1), Rules of the Sixth Circuit. Upon review, the panel unanimously agrees that oral argument is not needed. Fed. R. App. P. 34(a).

The Masseys primarily alleged that their constitutional rights were violated by a federal bankruptcy judge, because he rejected their Chapter 12 plan, terminated the automatic stay of their bankruptcy proceedings, and failed to adequately protect their

Appendix A-1

interests regarding the distribution of their assets. The district court liberally construed these claims under *Bivens v. Six Unknown Named Agents of Fed. Bureau of Narcotics*, 403 U.S. 388 (1971). The Masseys also alleged that a state court judge violated their rights by ordering the sale of their property to satisfy a judgment against them, by distributing the proceeds of the sale of judgment creditors, and by holding them in contempt when they refused to vacate the property. The district court dismissed the case on February 25, 2004, and it is from this judgment that the Masseys now appeal.

A *de novo* review of the record shows that the defendants were entitled to judicial immunity.

Like other forms of official immunity, judicial immunity is an immunity from suit, not just from ultimate assessment of damages. Accordingly, judicial immunity is not overcome by allegations of bad faith or malice, the existence of which ordinarily cannot be resolved without engaging in discovery and eventual trial.

Rather, our cases make clear that the immunity is overcome in only two sets of circumstances. First, a judge is not immune from liability for nonjudicial actions, i.e., actions not taken in the judge's judicial capacity. Second, a judge is not immune for actions, though judicial in nature, taken in the complete absence of all jurisdiction.

Mireles v. Waco, 502 U.S. 9, 11-12 (1991) (per curiam) (citations omitted).

The Masseys now argue that "there is a systemic problem with our Justice System," that the bankruptcy judge "enjoys the selective benefit of his position" because he is an acquaintance of a United States senator, and that the state court judge has a friend, who is a friend of the senator. However, they have not made a persuasive showing that the defendants acted outside the scope of their judicial capacity or that the defendants acted in the complete absence of jurisdiction. Hence, their claims for monetary relief were properly dismissed on grounds of absolute immunity. *See id.* at 12; *Mann v. Conlin*, 22 F.3d 100, 104-05 (6th Cir. 1994).

The Masseys also sought various forms of injunctive relief. These claims are unavailing as "injunctive relief shall not be granted" in an action brought against "a judicial officer for an act or omission taken in such officer's judicial capacity...unless a declaratory decree was violated or declaratory relief was unavailable." 42 U.S.C. § 1983 (2003); accord *Montero v. Travis*, 171 F.3d 757, 761 (2d Cir. 1999).

Accordingly, the district court's judgment is affirmed. Rule 34(j)(2)(C), Rules of the Sixth Circuit.

ENTERED BY ORDER OF THE COURT

/s/ Leonard Green

Clerk

8

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
AT BOWLING GREEN

BILLIE M. MASSEY and
GEORGIE C. MASSEY,
Plaintiffs,

Civil Action No.
03-CV-147

VS.

-HON. BERNARD A. FRIEDMAN

DAVID T. STOSBERG and
RONNIE C. DORTCH,
Defendants.

OPINION AND ORDER GRANTING
DEFENDANTS' MOTIONS TO DISMISS

This matter is presently before the court on defendant Dortch's motion to dismiss, filed September 3, 2003, and on defendant Stosberg's motion to dismiss, filed October 30, 2003. Plaintiffs have responded to both motions, which the court shall decide without oral argument.

Plaintiffs Billie and Georgie Massey, husband and wife, have brought this action pro se under 42 U.S.C. § 1983.¹ After the district judges of the Western District of Kentucky recused themselves, the Chief Judge of the United States Court of Appeals for the Sixth Circuit reassigned the matter to me pursuant to 28 U.S.C. § 291(b).

¹Bankruptcy Judge Stosberg, who is a federal and not a state official, is not a proper defendant in a § 1983 action. For present purposes, the court shall assume that plaintiffs intended to sue Bankruptcy Judge Stosberg under Biven v. Six Unknown Named Agents, 403 U.S. 388 (1971).

The following facts appear in the complaint and in the documents attached thereto. On June 23, 1999, plaintiffs filed for bankruptcy under Chapter 12. The petition was filed with the United States Bankruptcy Court for the Western District of Kentucky and it was assigned to Bankruptcy Judge David T. Stosberg. As part of their petition, plaintiffs disclosed that Bank of Edmonson County ("the bank") held a first mortgage in the amount of \$83,004 on one of plaintiffs' pieces of real property (a 55.5-acre parcel) and a second mortgage in the amount of \$29,639 on another of plaintiffs' pieces of real property (a 245-acre parcel).

On June 30, 1999, the bank filed a motion in the Bankruptcy Court to terminate the automatic stay. Specifically, the bank sought permission to enforce a judgment it had previously obtained in a foreclosure action against plaintiffs in Edmonson Circuit Court. On May 17, 1999, Judge Ronnie C. Dortch of that court issued an Order Directing Judicial Sale, which directed the Master Commissioner of the Edmonson Circuit Court to appraise, advertise and sell plaintiffs' 55.5-acre and 245-acre parcels. Plaintiffs filed a response in opposition to the bank's motion to terminate the automatic stay. On July 22, 1999, Judge Stosberg heard oral argument and ordered that the automatic stay remain in place pending another hearing on October 21, 1999. On October 21, 1999, after hearing additional argument, Judge Stosberg issued an order rejecting plaintiffs' Chapter 12 plan as "not feasible" and granting the bank's motion to terminate the automatic stay. In January 2001 plaintiffs' bankruptcy case was closed.

In March 2000 Edmonson Circuit Court Master Commissioner Natty Bumpo advertised the two parcels for sale. On May 15, 2000, on the commissioner's motion, Judge Dortch issued an order distributing the sale proceeds. After delinquent property taxes and various other expenses were paid, the balance of the proceeds went to the bank and two other creditors (the United States Farm Service Agency and Martha McCrady) to satisfy their judgments against plaintiffs on these parcels.

After the sale, plaintiffs refused to relinquish possession of the 55.5-acre parcel to the purchasers, Billy Hudson and Tim Aulbach. In September 2000 Hudson and Aulbach brought suit against the Masseys in Edmonson District Court to obtain possession. On September 12, 2000, Judge Renona Browning of that court entered a judgment finding the Masseys "guilty of forcible detainer as charged" and indicating that Hudson and Aulbach "shall recover the above [] described property from the Defendants, Billy Marvin Massey and Georgia E. Massey, on or before the seventh (7th) day after the entry of this Judgment."

When the Masseys failed to abide by this judgment, Hudson and Aulbach filed a motion on September 21, 2000, with the Edmonson Circuit Court for an order removing them from the property. In opposing this motion, the Masseys argued that it was unethical for Bumpo to sell their property because at the same time he was representing Billie Massey in an unrelated criminal matter, and that the sale had occurred "without any contact or direction from the Federal Bankruptcy Court."²

²As noted above, Bankruptcy Judge Stosberg had previously granted the bank's motion to lift the automatic stay.

The Masseys also suggested that the property was subject to "Homestead Exemption that is required under Federal Bankruptcy Law" and argued that "[t]here is a question of the Validity of the Deed while still in the Federal Bankruptcy Court." On October 9, 2000, Judge Dortch granted Hudson's and Aulbach's motion and ordered the sheriff to remove the Masseys and their personal belongings if they did not do so voluntarily within five days.

When the Masseys failed to obey this order, Judge Dortch found them in contempt. His November 27, 2000, order also indicated that the Masseys could purge themselves of contempt by vacating the property before December 4, 2000, but that after that date they would be detained. On December 11, 2000, when the Masseys still had not vacated, Judge Dortch ordered the sheriff to take them into custody and to remove their personal property. On December 18, 2000, the sheriff executed Judge Dortch's order and took the Masseys into custody. Georgia Massey was released on her own recognizance; Billie Massey was held on the contempt charge until January 12, 2001.

In the present case, the Masseys are suing Bankruptcy Judge Stosberg and Edmonson Circuit Judge Dortch for various alleged "violations of statutory law." Complaint, p. 1. Specifically, plaintiffs allege that Judge Stosberg violated their rights by terminating the automatic stay, failing to require the bank to prove that plaintiffs did not have any equity in their real property, rejecting their Chapter 12 plan, and failing to enjoin the sale of their property and the distribution of the proceeds. See Complaint PP 9-16. Plaintiffs allege that Judge Dortch violated their rights by ordering the sale of their property

and the distribution of the proceeds, allowing plaintiff Billie Massey's criminal defense attorney Natty Bumpo to supervise the sale and distribution, evicting them from their property, finding them in contempt, and ordering them held in the sheriff's custody. See id. PP 18-29. For relief, plaintiffs request that defendants be "put on leave," that Judge Dortch be removed from office, that their property be returned, and that they be awarded \$12 million in damages.³

While defendants make several arguments in support of their respective motions to dismiss, one is particularly persuasive—namely, that both defendants are entitled to absolute judicial immunity. In Barnes v. Winchell, 105 F.3d 1111, 1115-16 (6th Cir. 1997), the Sixth Circuit explained the judicial immunity doctrine as follows:

It is a well-entrenched principle in our system of jurisprudence that judges are generally absolutely immune from civil suits for money damages. *Mireles v. Waco*, 502 U.S. 9, 9, 112 S.Ct. 286, 287, 116 L.Ed.2d 9 (1991); *Forrester v. White*, 484 U.S. 219, 108 S.Ct. 538, 98 L.Ed.2d 555 (1988); *Stump v. Sparkman*, 435 U.S. 349, 98 S.Ct. 1099, 55 L.Ed.2d 331 (1978); *Pierson v. Ray*, 386 U.S.

³Plaintiffs previously asserted similar claims against various other parties in a related case commenced in the Western District of Kentucky. In that case, the district court's dismissal of plaintiffs' complaint was affirmed by the court of appeals. See Massey v. Bank of Edmonson County, et al., 2002 WL 31475012 (6th Cir. Oct. 31, 2002). On October 6, 2003, the Supreme Court denied plaintiffs' petition for writ of certiorari. See WL 21693643.

437, 87 S.Ct. 1213, 18 L.Ed.2d 288 (1967), *Bradley v. Fisher*, 80 U.S. (13 Wall.) 335, 20 L.Ed. 646 (1872). Immunity from a § suit for money damages is no exception. See *Pierson*, 386 U.S. at 554, 87 S.Ct. at 1217-18. The doctrine of judicial immunity is justified "by a long-settled understanding that the independent and impartial exercise of judgment vital to the judiciary might be impaired by exposure to potential damages liability." *Antoine*, 508 U.S. at 435, 113 S.Ct. at 2171. Thus, compelling public benefits outweigh the "unfairness and injustice to a litigant [that] may result on occasion, [because] 'it is a general principle of the highest importance to the proper administration of justice that a judicial officer, in exercising the authority vested in him, shall be free to act upon his own convictions, without apprehension of personal consequences to himself.'" *Mireles*, 502 U.S. at 10, 112 S.Ct. at 287 (quoting *Bradley*, 80 U.S. (13 Wall.) at 347). If it were otherwise and judges were personally liable for erroneous decisions, then "the resulting avalanche of suits, most of them frivolous but vexatious, would provide powerful incentives for judges to avoid rendering decisions likely to provoke such suits." *Forrester*, 484 U.S. at 226-27, 108 S.Ct. at 544.

In view of the Supreme Court's longstanding and emphatic recognition of

the underlying justifications of the doctrine has protected a sweeping range of judicial actions... In fact, the Supreme Court explicitly stated that "[a] judge will not be deprived of immunity because the action he took was in error, was done maliciously, or was in excess of his authority," nor "if his exercise of authority is flawed by the commission of grave procedural errors." *Stump*, 435 U.S. at 356, 359, 98 S.Ct. at 1105, 1106.

Absolute judicial immunity is overcome only in two situations:

First, a judge is not immune from liability for nonjudicial actions, i.e., actions not taken in the judge's judicial capacity. Second, a judge is not immune for actions, though judicial in nature, taken in the complete absence of all jurisdiction.

Mireles, 502 U.S. at 11-12, 112 S.Ct. at 288 (internal citations omitted)...

In the present case, defendants are entitled to absolute judicial immunity for all of their action alleged in the complaint. All of the actions enumerated by plaintiffs were judicial actions taken by Bankruptcy Judge Stosberg and Circuit Judge Dortch within their respective jurisdictions. As noted above, plaintiffs focus on Judge Stosberg's decisions to lift the automatic stay and reject

their Chapter 12 plan; and on Judge Dortch's decisions to conduct a foreclosure sale, distribute the sale proceeds, order plaintiffs to surrender possession of their property, and to find plaintiffs in contempt. These are classic, judicial acts, all of which are solidly within each judge's jurisdiction. Plaintiffs appear to acknowledge that all of the decisions in question were judicial actions; plaintiffs simply disagree with those decisions and believe they were "wrongful." Complaint, pp. 2, 8. No where do plaintiffs allege that defendants acted "in the complete absence of all jurisdiction."

It is not proper to sue a judge because of his rulings when, as here, those rulings are made within the judge's jurisdiction. The immunity is not lost even if the judge acts maliciously or commits error, so long as he does not act "in the complete absence of all jurisdiction." If defendants committed any error (and none is apparent), plaintiffs' remedy was not to sue them, but to appeal any adverse rulings. Decisions of the Bankruptcy Court are appealable to the United States District Court or the Bankruptcy Appellate Panel. Decisions of the Edmonson Circuit Court are appealable to the Kentucky Court of Appeals.

For these reasons, the court concludes that defendants are entitled to absolute judicial immunity. Even when the complaint is viewed with the leniency under Haines v. Kerner, 404 U.S. 519 (1972), and even assuming the truth of all of plaintiff's factual allegations, it is clear that the complaint fails to state a claim upon which relief can be granted. Accordingly,

IT IS ORDERED that defendant Dortch's motion to dismiss is granted.

Appendix B-8

IT IS FURTHER ORDERED that defendant Stosberg's motion to dismiss is granted.

IT IS FURTHER ORDERED that plaintiffs' motion "for an enlargement of time to respond to Defendant [sic] David T. Stosberg's reply to plaintiffs' response to Judge Stosberg's motion to dismiss plaintiffs' complaint" is denied, as the court's rules do not permit the filing of a response to a reply brief.

/s/ Bernard A. Friedman
BERNARD A. FRIEDMAN
UNITED STATES DISTRICT JUDGE
SITTING BY SPECIAL DESIGNATION

Dated:

Detroit, Michigan

cc: *Plaintiffs*
Counsel

ENTERED
02/25/2002
JEFFREY A. APPERSON, CLERK
BY *Celia Murling*
DEPUTY CLERK

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
AT BOWLING GREEN

BILLIE M. MASSEY and
GEORGIE C. MASSEY,

Plaintiffs,

Civil Action No.
03-CV-147

VS.

HON. BERNARD A. FRIEDMAN

DAVID T. STOSBERG and
RONNIE C. DORTCH,
Defendants.

JUDGMENT

The court has granted both defendants' motions to dismiss the complaint. Accordingly,

IT IS ORDERED AND ADJUDGED that judgment be and is hereby granted for defendants and against plaintiffs. Costs to be permitted in accordance with law.

JEFFREY A. APPERSON
CLERK OF COURT

By: /s/Celia Merlong
Deputy Clerk

Approved: /s/ Bernard A. Friedman
BERNARD A. FRIEDMAN
U.S. DISTRICT JUDGE
SITTING BY SPECIAL DESIGNATION

Appendix B-10

ENTERED
03/15/04
JEFFREY A. APPERSON,
BY *Celia Merlong*
DEPUTY CLERK

No. 04-5344
UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

BILLIE M. MASSEY;)
GEORGIE C. MASSEY,)
Plaintiffs-Appellants,)

VS.)

ORDER

DAVID T. STOSBERG, Judge,)
United States Bankruptcy)
Court; RONNIE C. DORTCH,)
Thirty-eighth Judicial Circuit,)
Defendants-Appellees)

Before: BOGGS, Chief Judge; KENNEDY and MARTIN,
Circuit Judges.

Billie M. Massey and Georgie C. Massey ("the Masseys") appeal pro se from a district court judgment that dismissed their civil right's action, filed under 42 U.S.C. § 1983. Their appeal has been referred to a panel of this court pursuant to Rule 34(j)(1), Rules of the Sixth Circuit. Upon review, the panel unanimously agrees that oral argument is not needed. Fed. R. App. P. 34(a).

The Masseys primarily alleged that their constitutional rights were violated by a federal bankruptcy judge, because he rejected their Chapter 12 plan, terminated the automatic stay of their bankruptcy proceedings, and failed to adequately protect their interests regarding the distribution of their assets. The district court liberally construed these claims under *Bivens v. Six Unknown Named Agents of Fed. Bureau of Narcotics*,

403 U.S. 388 (1971). The Masseys also alleged that a state court judge violated their rights by ordering the sale of their property to satisfy a judgment against them, by distributing the proceeds of the sale to judgment creditors, and by holding them in contempt when they refused to vacate the property. The district court dismissed the case on February 25, 2004, and it is from this judgment that the Masseys now appeal.

A *de novo* review of the record shows that the defendants were entitled to judicial immunity.

Like other forms of official immunity, judicial immunity is an immunity from suit, not just from ultimate assessment of damages. Accordingly, judicial immunity is not overcome by allegations of bad faith or malice, the existence of which ordinarily cannot be resolved without engaging in discovery and eventual trial.

Rather, our cases make clear that the immunity is overcome in only two sets of circumstances. First, a judge is not immune from liability for nonjudicial actions, i.e., actions not taken in the judge's judicial capacity. Second, a judge is not immune for actions, though judicial in nature, taken in the complete absence of all jurisdiction.

Mireles v. Waco, 502 U.S. 9, 11-12 (1991) (per curiam) (citations omitted).

The Masseys now argue that "there is a systematic problem within our Justice System," that the bankruptcy judge "enjoys the selective benefit of his position" because he is an acquaintance of a United States senator, and that the state court judge has a friend, who is a friend of the senator. However, they have not made a persuasive showing that the defendants acted outside the scope of their judicial capacity or that the defendants acted in the complete absence of jurisdiction. Hence, their claims for monetary relief were properly dismissed on grounds of absolute judicial immunity. *See id.* at 12; *Mann v. Conlin*, 22 F.3d 100, 104-05 (6th Cir. 1994).

The Masseys also sought various forms of injunctive relief. These claims are unavailing as "injunctive relief shall not be granted" in an action brought against "a judicial officer for an act or omission taken in such officer's judicial capacity...unless a declaratory decree was violated or declaratory relief was unavailable." 42 U.S.C. § 1983 (2003); *accord Montero v. Travis*, 171 F.3d 757, 761 (2d Cir. 1999).

Accordingly, the district court's judgment is affirmed. Rule 34(j)(2)(C), Rules of the Sixth Circuit.

ENTERED BY THE ORDER OF THE COURT

/s/Leonard Green

Clerk

No. 04-5344
UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FIL

JUN 0 1

LEONARD GR

BILLIE M. MASSEY; ET AL.,)

)

Plaintiffs-Appellants,)

)

VS.)

)

DAVID T. STOSBERG, JUDGE,)

)

UNITED STATES

BANKRUPTCY COURT,)

)

ET AL.,

)

Defendants-Appellees)

ORDE

ORDER

Before: BOGGS, Chief Judge; KENNEDY and MARTIN,
Circuit Judges.

This court having received a petition for rehearing en banc, and the petition having been circulated not only to the original panel members but also to all other active judges of this court, and non judge of this court having requested a vote on the suggestion for rehearing en banc, the petition for rehearing has been referred to the original panel.

The panel has further reviewed the petition for rehearing and concludes that the issues raised in the petition were fully considered upn the original submission and decision of the case. Accordingly, the petition is denied.

Appendix C-1

No. 04-5344

ENTERED BY ORDER OF THE COURT

/s/ Leonard Green
Leonard Green, Clerk

No. 04-5344
UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FIL:

FEB 8

LEONARD GREE

BILLIE M. MASSEY;)
GEORGIE C. MASSEY,)
Plaintiffs-Appellants,)

VS.)

ORDER

DAVID T. STOSBERG, Judge,)
United States Bankruptcy)
Court; RONNIE C. DORTCH,)
Thirty-eighth Judicial Circuit,)
Defendants-Appellees)

NOT RECOMMENDED FOR FULL
PUBLICATION
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Before: BOGGS, Chief Judge; KENNEDY and MARTIN,
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The Masseys primarily alleged that their constitutional rights were violated by a federal bankruptcy judge, because he rejected their Chapter 12 plan, terminated the automatic stay of their bankruptcy proceedings, and failed to adequately protect their interests regarding the distribution of their assets. The district court liberally construed these claims under *Bivens v. Six Unknown Named Agents of Fed. Bureau of Narcotics*,

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A *de novo* review of the record shows that the defendants were entitled to judicial immunity.

Like other forms of official immunity, judicial immunity is an immunity from suit, not just from ultimate assessment of damages. Accordingly, judicial immunity is not overcome by allegations of bad faith or malice, the existence of which ordinarily cannot be resolved without engaging in discovery and eventual trial.

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Accordingly, the district court's judgment is affirmed. Rule 34(j)(2)(C), Rules of the Sixth Circuit.

ENTERED BY THE ORDER OF THE COURT

/s/Leonard Green

Clerk

S

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
BOWLING GREEN DIVISION

CIVIL ACTION NUMBER: 1:03CV-147-M

BILLIE M. MASSEY
GEORGIE C. MASSEY

PLAINTIFFS

vs.

DAVID T. STOSBERG, *Judge,*
United States Bankruptcy Court and
RONNIE C. DORTCH, *Judge*
Thirty-Eighth Judicial Circuit

DEFENDANTS

ORDER

Due to the appearance of a conflict of interest, the undersigned recuses himself from further service in the above-styled action.

The referral to E. Robert Goebel, United States Magistrate Judge, is terminated.

This matter shall be submitted to the Honorable John G. Heyburn, II, Chief Judge, for reassignment to another Judge.

IT IS SO ORDERED this the 20th day of August, 2003.

/s/ Joseph H. McKinley, Jr. Judge
JOSEPH H. MCKINLEY, JR., JUDGE
UNITED STATES DISTRICT COURT
Appendix D



UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
AT BOWLING GREEN

BILLY M. MASSEY AND
GEORGIE MASSEY

PLAINTIFFS

VS.

CIVIL ACTION NO. 1:03CV-147-M

JUDGE DAVID T. STOSBERG AND
JUDGE RONNIE C. DORTCH

DEFENDANTS

ORDER

Upon review of this matter, the Court must conclude that recusal in this case is required as well as all judges sitting in the Western District of Kentucky, therefore,

IT IS ORDERED that the Clerk of Court shall refer this matter to the Chief Judge of the Sixth Circuit Court of Appeals for reassignment.

This 5th day of Sept., 2003.

/s/ John I. Heyburn II
JOHN G. HEYBURN II, CHIEF JUDGE
UNITED STATES DISTRICT COURT

09/09/03
Celia M. Wilcox

Appendix E

DANNY BOGGS

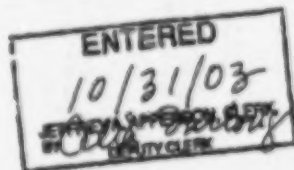
DESIGNATION OF DISTRICT JUDGE
FOR SERVICE IN ANOTHER DISTRICT
WITHIN HIS CIRCUIT

WHEREAS, in my judgement the public interest so requires; Now, therefore, pursuant to the authority vested in me by Title 28, United States Code, Section 291 (b), I do hereby designate and assign the Honorable

Bernard Friedman

United States District Judge for the Eastern District of Michigan to hold a district court in the Western District of Kentucky to hear the case of Bill M. Massey and Georgie Massey vs. Judge David T. Stosberg and Judge Ronnie C. Dortch, No. 1:03CV-147-M, and for such additional time in advance thereof to prepare for the trial of case, or thereafter as may be required to complete unfinished business.

/s/ Danny J. Boggs
Danny J. Boggs
Chief Judge
United States Court of Appeals
for the Sixth Circuit



Appendix F